

**Office of the Governor**  
**Division of Administration**  
**Patient's Compensation Fund Oversight Board**  
**(LAC 37:III Emergency Rule 5)**

Upon finding that imminent peril to the public health, safety or welfare required adoption of an emergency rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1231.1 et seq. (MMA), and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., adopted this Emergency Rule 5 at its meeting held on September 1, 2016.

On August 12, 2016, Governor John Bel Edwards issued Proclamation No. 111 JBE 2016 and declared the existence of a State of Emergency within the State of Louisiana caused by flash flooding and severe weather (Great Flood of 2016). This State of Emergency extended from Friday, August 12, 2016 through Saturday, September 10, 2016.

On August 17, 2016, at the request of Commissioner of Insurance James J. Donelon, Governor John Bel Edwards issued Executive Order No. JBE 2016-58, wherein Governor John Bel Edwards ordered, *inter alia*, (i) a limited transfer of authority to Commissioner of Insurance James J. Donelon to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal and nonreinstatement provisions of Title 22; and that (ii) the limited transfer of authority shall remain in full force and effect retroactively from Friday, August 12, 2016 through Monday, September 12, 2016.

On or about August 19, 2016, Louisiana Insurance Commissioner James J. Donelon acknowledged the foregoing and issued Emergency Rule 27 suspending certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting certain insureds from the Parishes of Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Feliciana and any such parishes that have or may hereafter receive a major disaster declaration by the President of the United States or such officer acting under his authority for the Great Flood of 2016.

Tens of thousands of Louisiana citizens, including many qualified health care providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF), have suffered damages due to the Great Flood of 2016. The health care practices and homes of many QHCPs and the homes of many patients were destroyed or were without power precluding the operation of practices, habitation and the delivery of mail. It is believed that this disruption has affected for some time, the ability of these QHCPs to timely pay their annual renewal PCF surcharges in full and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana. The Great Flood of 2016 has created a mass disruption to the normalcy previously enjoyed by QHCPs and patients and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens, both patients and QHCPs alike.

Accordingly, Emergency Rule 5 was adopted by the Oversight Board and shall apply to certain QHCPs as set forth in this Emergency Rule.

In the ordinary course of business and pursuant to LAC 37:III §517, a QHCP is allowed a “grace” period of thirty (30) days in which to pay the annual renewal PCF surcharge in full to the insurer, the PCF or to the self-insurance trust, as applicable, to extend PCF coverage for another year. The Great Flood of 2016 and its aftermath have produced a disruption in the ability of many QHCPs in these affected areas to timely pay the annual renewal PCF surcharge in full to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. Emergency Rule 5 was adopted to provide emergency relief to certain QHCPs as set forth therein.

## **Title 37 INSURANCE**

### **Part III. Patient's Compensation Fund Oversight Board**

#### **Chapter 1. General Provisions**

#### **§115. Qualified Health Care Provider Services**

##### **Emergency Rule 5**

A.1. Emergency Rule 5 shall apply to all QHCPs:

(i) who, as of 12:01 a.m. on August 12, 2016, reside in, whose operation(s) and/or practice(s) are located in, or whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one or more of the following parishes or in one or more of any other parish(es) that have or may hereafter receive a major disaster declaration by the President of the United States or such officer acting under his authority:

Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, and West Feliciana; and

(ii) whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 12, 2016 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule 5, QHCPs who meet all of the above criteria shall be referred to herein as “Affected QHCPs”. The provisions of this Emergency Rule 5 shall not apply to any health care provider not previously enrolled in the PCF prior to August 12, 2016.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for Affected QHCPs during the effective periods set forth in this Emergency Rule 5. Except as provided for in paragraph A(5) of this §115, the cancellation of PCF qualification for Affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until September 12, 2016.

a. PCF surcharges for all Affected QHCPs whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 12, 2016 but prior to or on September 12, 2016 (suspension period), shall be due and owing on September 12, 2016. Affected QHCPs shall also furnish the required proof of

financial responsibility concurrently with the payment of the appropriate surcharge. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

b. The executive director is hereby granted continuing authority to reasonably extend the suspension period for those Affected QHCPs who certify to the Oversight Board in writing that said Affected QHCP was impacted by the Great Flood of 2016 in a manner, including but not limited to, evacuation, displacement, temporary relocation, or loss of power, sufficient to prevent the timely payment of the renewal surcharge.

c. The 30 day grace period provided for in LAC 37:III §517 for payment of the annual PCF renewal surcharge by Affected QHCPs who have been granted an extension of the suspension period shall commence on the day immediately following the end of the extended suspension period; the 30 day grace period for all other Affected QHCPs shall commence on September 13, 2016.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an Affected QHCP, then the renewal surcharge shall be timely remitted to the PCF consistent with the MMA and the Oversight Board's applicable rules.

5. A cancellation of PCF qualification for an Affected QHCP shall not occur prior to September 12, 2016 unless upon the documented written request or written concurrence of the Affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency Rule 5 shall be construed to exempt or excuse an Affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.

7. Emergency Rule 5 shall not relieve an affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of Emergency Rule 5 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the Affected QHCPs and the citizens of Louisiana.

9. Emergency Rule 5 became effective on August 12, 2016 and shall continue in full force and effect to September 12, 2016.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 27 of the Louisiana Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 42:

### **§117. Termination; Survival**

A. Emergency Rule 5 shall terminate at 12:01 a.m. on September 12, 2016. However, Paragraphs A.3 and A.6 through A.8 of §115 shall survive the termination of this Emergency Rule 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 27 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 42:

**§119. Severability Clause**

A. If any section or provision of Emergency Rule 5, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 5, as originally adopted and/or amended, to the Affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to affected QHCPs or circumstances shall be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1231.4(D)(3) and to be consistent with Emergency Rule No. 27 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 42:

**Ken Schnauder**  
**Executive Director**  
**Patient's Compensation Fund Oversight Board**

By: \_\_\_\_\_

**David A. Woolridge, Jr., Attorney**

**Dated: September \_\_\_\_, 2016**